

Staff Summary Report



To: Mayor and City Council
Through: City Manager

Agenda Item Number 30
Meeting Date: 08/09/01

SUBJECT: 101 & BROADWAY CORPORATE CENTER BUILDING #3

PREPARED BY: DeeDee (D²) Kimbrell, Planner II (480-350-8331)

REVIEWED BY: Dave Fackler, Development Services Manager (480-350-8333)

q-j

BRIEF: This is the second public hearing for 101 & Broadway Corporate Center Building #3 for an appeal to a City Council condition (#8) and a parking variance for a site plan consisting of 5,656 s.f. at 2065 South Cottonwood Drive.

COMMENTS: **PLANNED DEVELOPMENT (0406)** Hold the second public hearing for 101 & BROADWAY CORPORATE CENTER BUILDING #3 (Dallas Petersen, Sahuaro Ventures LLC, property owner) for an appeal to a City Council condition (#8) and a variance to reduce the required number of on-site parking spaces from 38 to 23 spaces for a 5,656 s.f. office building located at 2065 South Cottonwood Drive. The following approval is requested from the City of Tempe:

#SIP-2001.59 A Site Plan for 101 & Broadway Corporate Center Building #3 to appeal an existing City Council condition of approval # 8, case # SIP-99.27. (Please see Previous Condition of Approval and variance on Attachment #2.)

Document Name: 20010809devsrh04

Supporting Documents: Yes

SUMMARY: On May 6, 1999, City Council approved a site plan with variances for a 30,530 s.f. office project (Tracts A & B, located east and west of Cottonwood Drive). On September 23, 1999 the applicant returned to City Council with a slightly larger site plan with variances consisting of 5 buildings for a total of 32,676 s.f. (Tracts A & B). City Council also approved that request. Included with those approvals was a condition to reduce the building area and increase parking spaces if medical offices were proposed (condition #8). The current request is for an appeal to a City Council condition (#8, SIP-99.27) and a variance to reduce the required number of on-site parking spaces from 38 to 23 spaces for a 5,656 s.f. office building. A sports therapy clinic is the proposed tenant within the 101 & Broadway Corporate Center. From the information received from the applicant, it appears that a sports therapy clinic will not generate the volume of traffic as a typical medical office use. Therefore, staff does not view this use as a "typical" medical use and supports this request. To date, two letters of opposition have been received.
Note: At the first public hearing on July 26, 2001, opposition and support was heard. Since that meeting, staff has met with the owner and tenant representatives to amend the CC&R's to address the neighborhoods concerns regarding overflow parking and after-hour activities. (Attachment G, items #11, 12, & 13) Staff has also added conditions to help mitigate the neighborhoods concerns.

RECOMMENDATION: Staff – Approval
Public – Opposition & Support

ATTACHMENTS:

1. List of Attachments
 2. History & Facts / Description
 3. Comments
 4. Reasons for Approval / Conditions of Approval
-
- A. Location Map
 - B. Site Plan
 - C. Floor Plan
 - D. Letter of Explanation/Intent
 - E. Letters of Opposition
 - F. Letter from Broadway Palms Neighborhood Assoc. 7/21/01
 - G. Proposed Amended CC&R's (Item's #11, 12, & 13) 8/01/01

HISTORY & FACTS:

<u>June 14, 1973.</u>	City Council approved a zone change from AG to R1-6 and a subdivision plat for Broadway Palms.
<u>May 15, 1997.</u>	City Council approved a zone change from R1-6 to RO and a site plan with variances for Price/Broadway Professional Office Buildings at 2305, 2325 & 2333 East Broadway Road.
<u>May 6, 1999.</u>	City Council approved a request by Broadway Office Plaza for a site plan with variances for a 30,530 s.f. office project (5 buildings) for Tracts A & B.
<u>September 23, 1999.</u>	City Council approved a request by Broadway Office Plaza for a site plan for a 32,676 s.f. office project (5 buildings), including 2 variances for Tracts A & B.
<u>February 16, 2000.</u>	The Board of Adjustment approved an increase in the maximum allowable building height from 15' to 20' for the Broadway Plaza, subject to conditions.
<u>January 11, 2001.</u>	City Council approved the request by 101 & Broadway Corporate Center for a Final Subdivision Plat for 4 lots on 1.94 net acres.
<u>July 26, 2001.</u>	City Council held their first public hearing for this request.

DESCRIPTION: Owner – Dallas Petersen, Sahuaro Ventures L.L.C.
Applicant – Mark Abel Architect and Associates
Architect – Mark Abel
Existing Zoning – RO/Residential Office
Net Site Area for Lots 1-4 (formerly Tract A) – 1.94 acres
Net Site Area for Sports Therapy Clinic (Lot 2, Building #3) – .47 acres
Total Bldg. Area for Tract A – 24,126 s.f.
Building Area for Sports Therapy Clinic (Lot 2, Building #3) – 5,656 s.f.
Total Parking Available for Lots 1-4 – 97 spaces
Total Parking Required for Sports Therapy Clinic (Lot 2, Building #3)– 38 spaces
Total Parking Provided for Sports Therapy Clinic (Lot 2, Building #3)– 23 spaces

Previous Condition of Approval:

#8 (SIP-99.27) In the future, if medical offices are proposed, the applicant will need to reduce building area and increase parking spaces.

Variance:

Reduce the required number of on-site parking spaces from 38 to 23 spaces.

COMMENTS: The applicant is requesting an appeal to a City Council condition (#8, SIP-99.27) and a variance to reduce the required number of on-site parking spaces from 38 to 23 spaces for a 5,656 s.f. office building.

On May 6, 1999, City Council approved a site plan with variances for a 30,530 s.f. office project for two tracts (Tracts A & B, east and west of Cottonwood Drive). On September 23, 1999 the applicant returned to City Council with a slightly larger site plan with variances consisting of 32,676 s.f. (Tracts A & B). City Council also approved that request. Included with those approvals was a condition to reduce the building area and increase parking spaces if medical offices were proposed (condition #8). On January 11, 2001, City Council approved a Final Subdivision Plat for 4 lots (formerly Tract A) located on the east side of Cottonwood Drive.

The existing building is approved for general office use. A sports therapy clinic is the proposed tenant within the newly subdivided Broadway Office Plaza. The sports therapy clinic is proposed to be located in Building #3 of Lot 2, consisting of 5,656 s.f. By ordinance, this use is considered medical office and is parked at 1 space per 150 s.f. of building area. Although the proposed use may be classified as medical, a sports therapy clinic habitually does not generate the vehicular traffic that a typical medical office use generates. The applicant would like to park their tenant space at the general office ratio (1 space per 250 s.f. of building area) for the 5,656 s.f. office building. The proposed tenant (Dr. Stevenson) has indicated that his patient load for a typical day averages 16 patients. Therefore, staff believes that the general office parking ratio should be sufficient for the site. To date, two letters of opposition has been received and both opposition and support was heard at the first public hearing on July 26, 2001.

Since the first public hearing, staff has met with the owner and tenant representatives (Eric Jones and Ken McQueen) to review the proposed amended CC&R's to address the neighborhood concerns regarding overflow parking and procedures for any after-hour activities. (Attachment G) Staff believes that the owner has met the intent of the neighbors to mitigate their concerns. Staff has also proposed conditions to help alleviate their concerns.

Staff supports the variance to park this tenant space at the general office ratio and also believes that this sports therapy clinic will not generate the volume of traffic as a typical medical office use. The reduced number of parking spaces on site should not create a nuisance for the surrounding area. Staff has proposed a condition that the variance be valid for the Sports Therapy Clinic only.

**REASON(S) FOR
APPROVAL:**

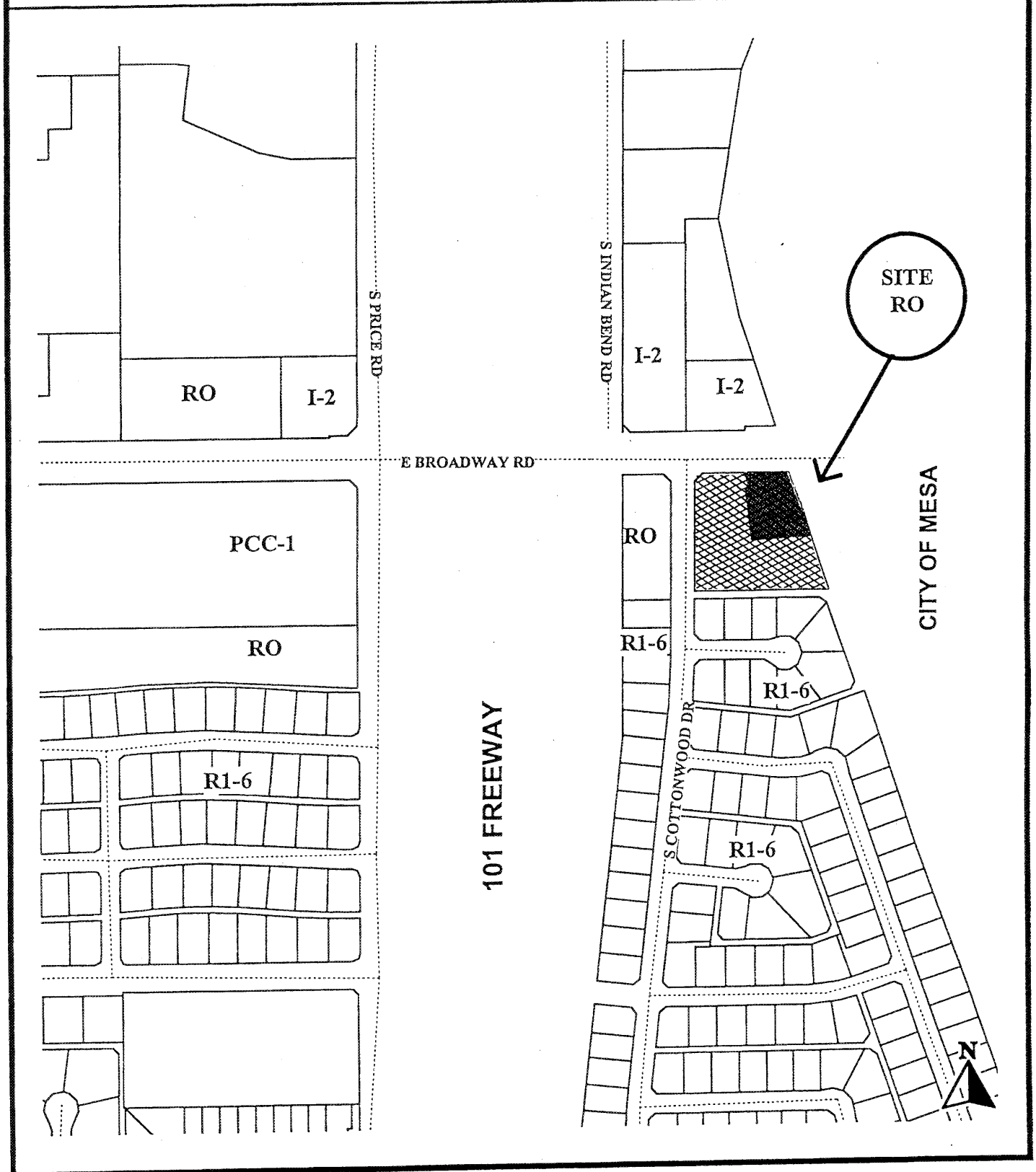
1. The proposed variance appears to function in an acceptable manner and should have no detrimental effects on adjacent properties and appears to pass the ordinance test.
2. The proposed amended CC&R's are acceptable to staff and appear to address the neighborhoods concerns.

**CONDITION(S)
OF APPROVAL:**

1. The variance is valid for the Sports Therapy Clinic tenant (Dr. Stevenson) only and is non-transferable unless approved by the City of Tempe through the appropriate review procedures.
2. All permits and clearances required by the Building Safety Division shall be obtained or the variance is void.
3. Any intensification or expansion of the Sports Therapy Clinic use shall require the applicant to return to the City Council for further review, prior to such expansion or intensification.
4. The amended CC&R's must be signed and recorded with the Maricopa County Recorder's Office prior to final inspection for the Tenant Improvement.
5. Owner must provide a copy of the amended CC&R's to the Development Services Department within 7 days of recordation.

101 & BROADWAY CORPORATE CENTER BUILDING #3

SIP-2001.59



Location Map SEE OTHER SIDE FOR MORE INFORMATION

A

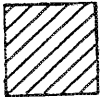
101 & BROADWAY CORPORATE
CENTER BUILDING #3

SIP-2001.59

SYMBOL(S):



EXISTING BUILDING(S)
GENERAL OFFICE

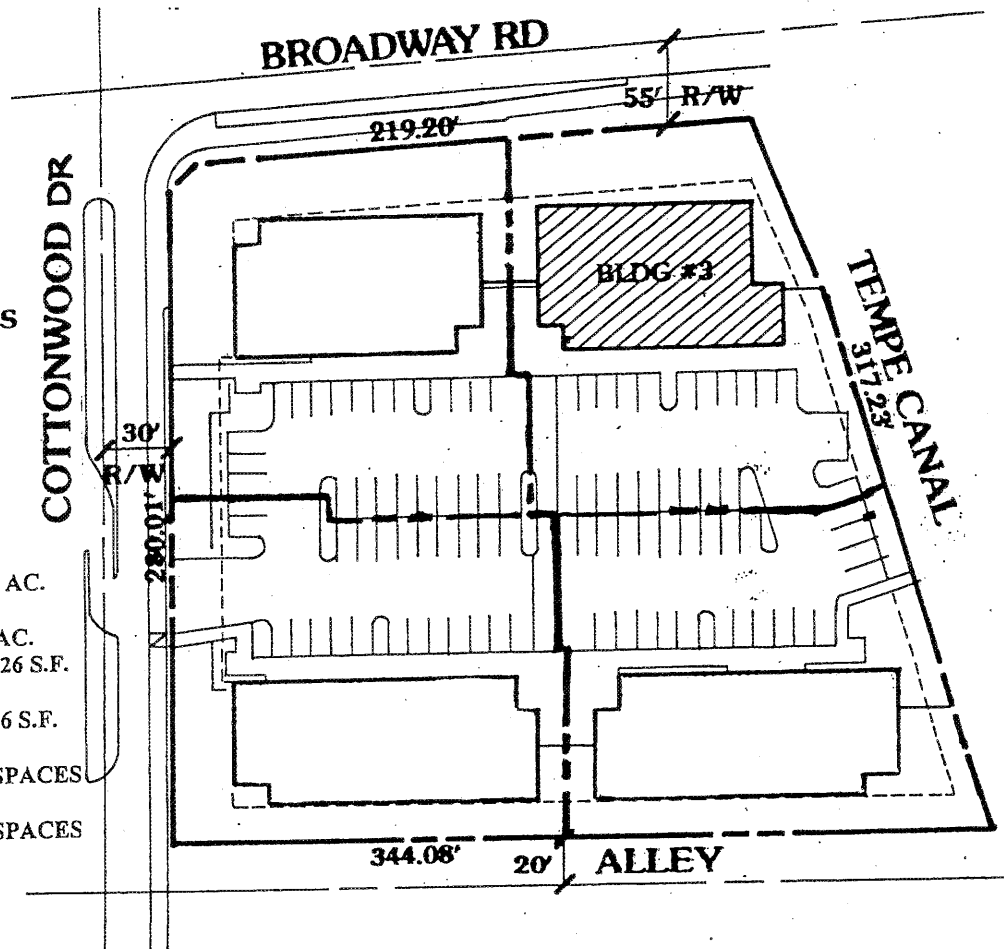


PROPOSED MEDICAL SPORTS
THERAPY CLINIC (5,656 S.F.)

SITE DATA:

NET SITE AREA:	1.94 AC.
NET SITE AREA FOR SPORTS THERAPY CLINIC:	.47 AC.
TOTAL BLDG. AREA:	24,126 S.F.
BLDG. AREA FOR SPORTS THERAPY CLINIC (BLDG. #3):	5,656 S.F.
TOTAL PARKING REQUIRED FOR SPORTS THERAPY CLINIC:	38 SPACES
TOTAL PARKING PROVIDED FOR SPORTS THERAPY CLINIC:	23 SPACES

VARIANCE(S):
(SEE BELOW)



MODIFIED

PUBLIC HEARING NOTICE

This is a notice for the second public hearing for 101 & BROADWAY CORPORATE CENTER BUILDING #3 (Dallas Petersen, Sahuaro Ventures LLC, property owner) for an appeal to a City Council condition (#8) and a variance to reduce the required number of on-site parking spaces from 38 to 23 spaces for a 5,656 s.f. office building located at 2065 South Cottonwood Drive. The following approval is requested from the City of Tempe:

#SIP-2001.59 A Site Plan for 101 & Broadway Corporate Center Building #3 to appeal an existing City Council condition of approval # 8, case # SIP-99.27, including the following:

Previous Condition of Approval:

#8 (SIP-99.27) In the future, if medical offices are proposed, the applicant will need to reduce building area and increase parking spaces.

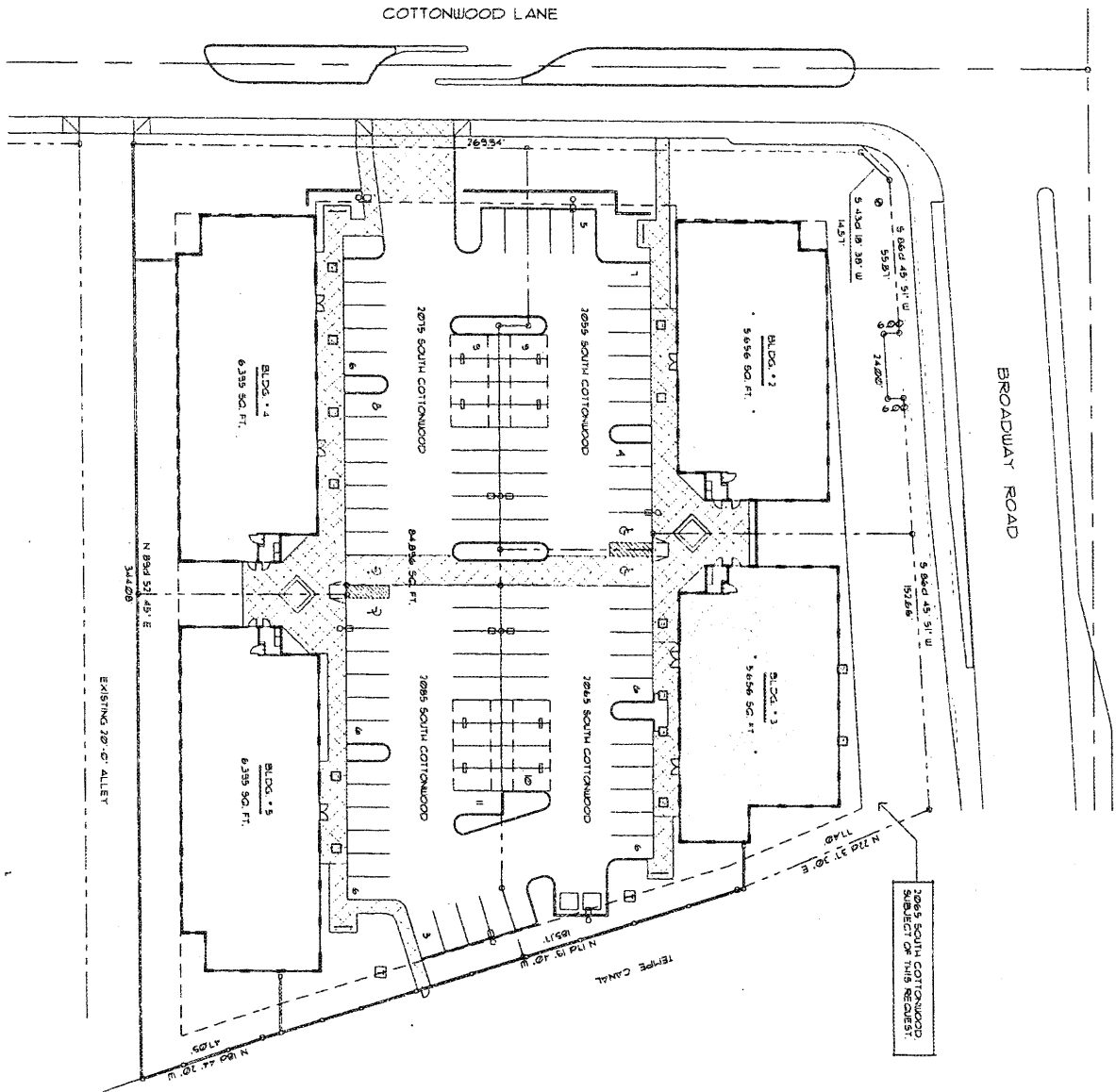
Variance:

B

SITE PLAN

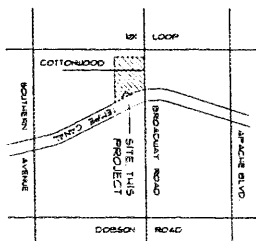


JOB NO. 0117
DATE: 5 / 24 / 01
SHEET NO. DR-V1



VICINITY MAP

NO SCALE



DR. STEVENSON	
SPORTS THERAPY	
2005 SOUTH COTTONWOOD DRIVE	
TEMPE, ARIZONA	
TITLE: SITE PLAN	

PROJECT DATA

PROJECT TITLE: 1011 BROADWAY CORPORATE CENTER
BUILDING THREE VARIANCE REQUEST
LOCATION: 2005 SOUTH COTTONWOOD DRIVE
TEMPE, ARIZONA
ZONING: R.O. (RESIDENTIAL OFFICE)
CONS. TYPE: V - N (SPRINKLED)
OCCUPANT: B (MEDICAL)
SITE AREA: 20,431 SQ. FT.
BUILDING AREA: 5,556 SQ. FT. (G.S.F.)
LOT COVERAGE: 31 %
LANDSCAPE COVER: 28 %
REQUIRED: 5,556 (45.5 / 150 + 38 PROVIDED)
OWNER: SAUNDERS VENTURES
311 WEST CULBERTSON
SUITE 200
TEMPE, AZ 85281
(602) 483-0808
ARCHITECT: MARK ABEL ARCHITECT / ASSOC.
4500 S. LAKESHORE DRIVE SUITE 580
TEMPE, AZ 85282
(480) 838-3374

1. TO REDUCE THE PARKING SPACE REQUIREMENT FROM 28 TO 21, TO ALLOW MEDICAL USE IN A GENERAL OFFICE USE BUILDING.



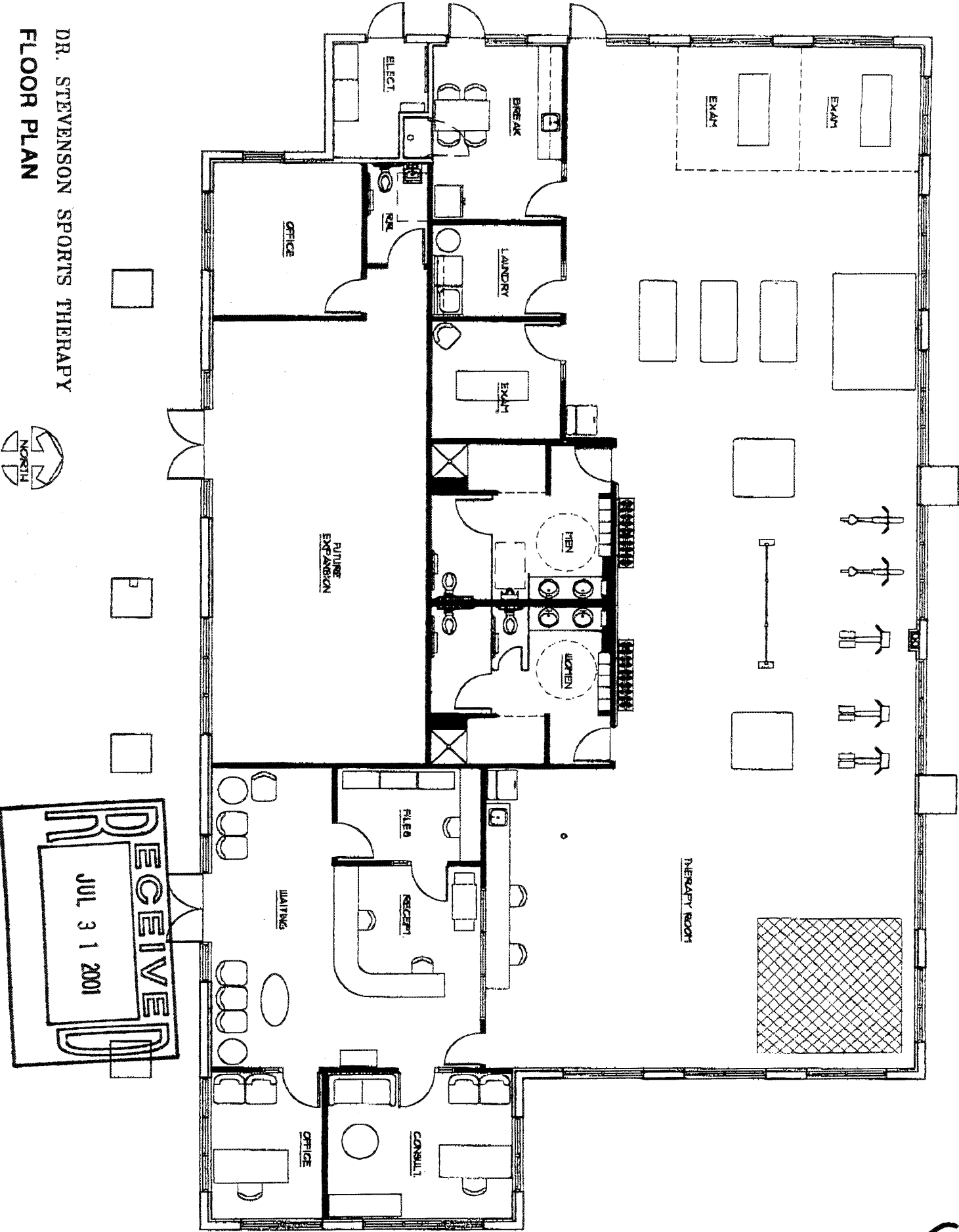
MARK ABEL ARCHITECT AND ASSOCIATES
4500 SOUTH LAKESHORE DRIVE SUITE 580 TEMPE, ARIZ. 85282 (480) 838-3374 FAX (480) 838-1694



JUL 03 2001

B

DR. STEVENSON SPORTS THERAPY
FLOOR PLAN



May 29, 2001
July 02, 2001 (Rev.)

**SUBJECT:
VARIANCE REQUEST,**

Reference **SIP-99.67
DRB99248**

**BROADWAY OFFICE PLAZA
2065 SOUTH COTTONWOOD DRIVE
TEMPE, ARIZONA**

Project Description:

The subject site is zoned RO, (Residential Office). The subject site is one of five general use office buildings which make-up a small office park, buildings range in size from +-5,000 to +-9,000 sq. ft. in size. The office park is split by Cottonwood Lane, and has frontage on the south side of Broadway Road.

Variance Request:

To reduce the parking space requirement, at Building Three, from: 38, to: 23, to allow medical use, in a general office use building.

Variance Justification:

The existing building is approved for general office use. The proposed use is that of sports therapy which is classified as medical use by the zoning ordinance. Although the proposed use may be classified as medical, the sports therapy use will not generate the vehicular traffic that a typical medical office use generates. The proposed sports therapy use will generate no more vehicular traffic than that of the existing approved office use. Dr. Stevenson's patient load for a typical day averages 16 patients, (or +- 2 per hour).

We submit that, based on the above stated information, approval of the requested variance will not adversely effect the surrounding property owners or adjacent property users, in any significant way. Consideration of this request is very much appreciated.

Submitted by:

Mark Abel, Principal
Mark Abel Architect and Associates

MARK ABEL ARCHITECT AND ASSOCIATES
4500 SOUTH LAKESHORE DRIVE SUITE 580, TEMPE, ARIZONA 85282 (480) 838-3374

JUL 03 2001

D

July 02, 2001

SUBJECT:
REQUEST TO DROP ZONING CONDITION,

Reference **SIP-99.67**
 DRB99248

BROADWAY OFFICE PLAZA
2065 SOUTH COTTONWOOD DRIVE
TEMPE, ARIZONA

SIP-97.27
ZON-97.07

Project Description:

The subject site is zoned RO, (Residential Office). The subject site is one of five general use office buildings which make-up a small office park, buildings range in size from +-5,000 to +-9,000 sq. ft. in size. The office park is split by Cottonwood Lane, and has frontage on the south side of Broadway Road.

Request:

To drop original site plan and Zoning Condition No. 8, (SIP-97.27 and ZON-97.07).

Justification:

The existing building is approved for general office use. The proposed use is that of sports therapy which is classified as medical use by the zoning ordinance. Although the proposed use may be classified as medical, the sports therapy use will not generate the vehicular traffic that a typical medical office use generates. The proposed sports therapy use will generate no more vehicular traffic than that of the existing approved office use. Dr. Stevenson's patient load for a typical day averages 16 patients, (or +- 2 per hour).

The intent of the referenced zoning condition was imposed to control parking. Because parking will not be effected by the sports therapy use, dropping the zoning condition, and approval of a stipulated variance for parking, will uphold the original condition intent.

We submit that, based on the above stated information, approval of this request will not adversely effect the surrounding property owners or adjacent property users, in any significant way. Consideration of this request is very much appreciated.

Submitted by:

Mark Abel, Principal
Mark Abel Architect and Associates

JUL 03 2001

MARK ABEL ARCHITECT AND ASSOCIATES
4500 SOUTH LAKESHORE DRIVE SUITE 580, TEMPE, ARIZONA 85282 (480) 838-3374

JUL 03 2001

D

BROADWAY CORP CENTER
BA 010152

OPPOSITION

GAR & GLORIA REICH

441 S. El Dorado Rd.

Mesa, AZ 85202

480-968-0828

01 JUN 25 AM 11:38

TELETYPE UNIT
CENTRAL DEPARTMENT

June 22, 2001

Board of Adjustment
P. O. Box 5002
Tempe, AZ 85280-5002

Members of the Board:

Thank you for allowing us the opportunity to respond to the variance request by 101 & Broadway Corporate Center, Lot #3, located at 2065 S. Cottonwood Drive to reduce the number of required parking spaces.

Our street is one block east of Cottonwood. With the limited number of parking places required for this business, the employees--let alone customers--will not have sufficient parking places without looking for street parking. Undoubtedly they will first seek parking on Cottonwood. Having to cross Broadway will be a deterrent to using the business parking north across Broadway. The next logical street is El Dorado

We already have the Montessori School teachers and parents using our street for parking. The congestion of cars pulling in and out of the school regularly causes near misses from cars turning off Broadway onto El Dorado. Our neighborhood also has a concern for the number of cars using our street, and for the speed at which they travel. This concern has been registered with the City of Mesa, and we have had to install speed breaks. We would not appreciate more traffic.

For these reasons, we oppose the variance. Because of the low number of parking spaces required even without the medical facility, we may still encounter a street parking issue.

We appreciate your concern for the impact that allowing this variance will have on our neighborhood.

Sincerely,

Gloria Reich

Gloria Reich
441 S. El Dorado Rd.
Mesa, AZ 85202

Paula Foster

Paula Foster
442 S. El Dorado Rd.
Mesa, AZ 85202

E

101 & BROADWAY CORP. CENTER
BA 010152

FILE COPY

OPPOSITION
(14 pp.)

Tuesday, June 26, 2001

Board of Adjustment
P.O. Box 5002
Tempe, AZ 85280-5002

RE: BA010152 101 & Broadway Corp. Center Lot #3

To Whom It May Concern:

The Broadway Palms Neighborhood Association would like the board to table the variance request by 101 & Broadway Corp. Center Lot #3 presented during a public hearing scheduled for Wednesday, June 27, 2001, until the following issues can be addressed. Unfortunately no one is available to attend the meeting because of work and other scheduling conflicts.

The two biggest objections to this development from the beginning were increased traffic on neighborhood streets and parking. I've attached copies of all documents presented before the Tempe City Council, Tempe Planning and Zoning Commission and Board of Adjustment hearings to date for your review.

- Per the original site-plan approval, the building size was to be altered, not the number of parking spaces if a medical office or medical service located in this development. This was intentionally included to eliminate the need for employees of the businesses located in this development to park on residential streets thus allowing enough parking for clients. If other buildings in this development also become medical related businesses, inadequate parking will become an issue.

1. Who then will address that issue? What forum is available to allow residents to reclaim their streets, including the parking space in front of their own homes?
2. Will non-residents be cited for parking on residential streets?
3. Will signs be posted?

- CC&R's are supposed to be in place to manage landscaping, security and other joint issues of the four separate parcels.

1. Is parking included among the issues addressed by that body?
 2. Does the business or the development have a plan for overall parking management should a problem arise?
 3. Are building tenants guaranteed a specified number of parking spaces in their purchase or lease agreements or is the parking lot communal property to all four buildings.
- How those issues are managed directly affects those families living closest to the facility.

- How many clients is this facility expecting in a normal workday?
1. Is a reduction of 15 parking spaces realistic considering the number of clients this business anticipates serving?

RECEIVED
JUN 26 AM 11:30
TEMPERANCE-DEVELOPMENT
SERVICES DEPARTMENT

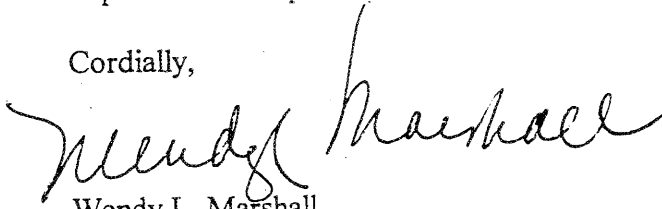
RECEIVED

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2. Are there peak service times when traffic and parking are anticipated to be a greater problem? When are those times? What plans are in place to mitigate the impact of peak times?

These are the concerns directly related to the variance request. Before the Board of Adjustment allows the requested variance, the residents living in the area respectfully request that our questions and concerns be addressed and resolved.

Cordially,

A handwritten signature in black ink, appearing to read "Wendy L. Marshall". The signature is fluid and cursive, with the first name "Wendy" being more prominent than the last name "Marshall".

Wendy L. Marshall

Broadway Palms Neighborhood Association

A separate concern tied to this development is the design and maintenance of the median on Cottonwood Drive. This was to be constructed and maintained by the developer to discourage traffic from the development to cut through the neighborhood. Highway engineers living in the neighborhood have suggested that the median is flawed. Its design does not allow for anything larger than a compact car to navigate the left turn cut without hitting the curb or driving over it all together. An emergency vehicle, full-size car, van, SUV, or service vehicles of any size, including landscaping and sanitation, will simply not fit. Can that left turn cut be adjusted? As for landscaping, currently the median is an unsightly mess of weeds and trash.

A handwritten mark in the bottom right corner of the page, consisting of two vertical lines with a horizontal crossbar, resembling the number 11 or a stylized signature.

The Tempe Planning and Zoning Commission did recommend approval of a zoning change from R1-6 (single family residential district) to R/O (residential office district) for the two vacant land parcels at the intersection of Broadway Road and Cottonwood at their regular meeting, held on April 22, 1997. The owner, Jerry Vaughn, presented a plan for the development of the 2.79 acres available. His plans, per his comments on April 22, and again this evening, are to personally develop the first site (west side of Cottonwood and Broadway) and sell the lots on the east side of Cottonwood. At this time, I would like to reiterate my concerns in relation to this project, so that they might be taken into consideration when you make your decision this evening.

Concern No. 1: Increased traffic on neighborhood streets, particularly Cottonwood, was identified as a potential problem when the office buildings are completed and occupied. Since there is no left turn access onto Broadway Road at Cottonwood, patrons of the facility will most likely drive down Cottonwood to Concorda Drive to exit the neighborhood to the west, and Cottonwood to George or Evergreen to exit the neighborhood to the south. Per traffic counts taken by the city, there are already 1,300 cars per day driving on Cottonwood between Concorda Drive and Broadway Road. That count was taken for 1 24-hour period on April 29, 1997. North and southbound traffic on George above Balboa, feeding traffic onto Cottonwood south of Concorda Drive exceeds 1700 cars per 24 hour period. I'm not certain when the counts on George were taken, but it was within the last 30 days. The figures were given to me by Rob Conway from the city Transportation office.

Among the pertinent conditions imposed by The Planning and Zoning staff are condition #7: The site plan shall be modified so that the driveway on Broadway Road on the east lot allow right turns in and right turns out only. Those details were to be resolved with staff prior to this evening. Condition #12 stated that the applicant (Mr. Vaughn) shall work with the neighborhood and Transportation Division to mitigate traffic potentially caused by this project through the neighborhood. Mr. Vaughn has not contacted or worked with anyone in the neighborhood directly. In fact, I contacted the planning and zoning office after their April 22nd meeting to find out how the process worked regarding those two conditions. To my knowledge there was no attempt by anyone with the city or with the project to contact our neighborhood regarding this issue. I was directed by Rob Conway to Larry Shobe, Traffic planner with the city. According to Mr. Shobe, Mr. Vaughn has agreed to the inclusion of a median that will be tied to the second phase of development (ie the eastern parcel) which will prohibit left turns into the neighborhood. The median would be designed, constructed, landscaped and maintained by the developer, whether that developer is Mr. Vaughn or a subsequent buyer. There are no plans for any mitigation with the development of the first parcel (west). No one has hinted or suggested a number of cars/trips that would be generated by the three offices slated for the building on the west. There will be no restrictions on turns into the neighborhood on that parcel. Let me emphasize again, traffic is a major concern for those of us who live in Broadway Palms.

Concern No. 2: Traffic speed. Although this is not a problem directly tied to this development, it is a problem. There are increasing numbers of families with small children moving into the area, and for whatever reason, increased volume seems to be married to increased speed. I was involved in an auto pedestrian accident more than one year ago in that neighborhood, from which I am still recovering, so I know personally the effects of high traffic volumes and drivers who are in a hurry. Traffic calming measures are critical, and are a concern that the city will need to address.

Concern No. 3: Parking and destination traffic. To ensure the greatest number of parking spaces available for customers, employees might park on neighborhood streets. Neighbors to the east on El Dorado and Esquire Way in Mesa have been plagued with Postal Service workers parking on neighborhood streets and using the

neighborhood as their "cut-through" to their job site. Those residents are in the process of petitioning the City of Mesa for a road closure in order to reclaim their neighborhood. Due to its design, Broadway Palms has a limited number of roads in and out of the subdivision, thereby generating a substantial number of entrances and exits from the people who live there. Additional numbers create an additional burden.

Concern No. 4: Notification. I now know that the law requires that signs be posted in pursuance to a zoning change, but it does not require the re-posting of those signs should they be removed, destroyed whether that removal or destruction is intentional or accidental. The law also requires that residents within 300 feet of the requested change need to be notified by mail. Neighborhood associations are also notified. In this instance, the signs were up less than one day. Our neighborhood association is in the very beginning stages of organization, so our network of disseminating information is not established. The 300 foot limit encompassed 10 or 12 houses — not the nearly 200 that are in Broadway Palms. Notification about this proposed change can therefore be described as limited at best. Between the April 22nd meeting, and this meeting this evening, there simply was not adequate time to get a letter to MaryAnn Corder or Gary Davis, neighborhood coordinators, to be mailed to every residence. We had people going door to door with flyers just to let people know, so that if they wished to comment, they could. With school and work schedules, I know we missed some.

Concern No. 5: Bait and Switch. R/O zoning does allow apartment complexes, something that would entirely change the face of our neighborhood. Mr. Vaughn is asking for the change from R1-6 (single family district) to R/O (residential office district). The plan on the table shows professional office buildings. But, because of the lack of notice of the zoning variance in the first place, and Mr. Vaughn's previous attempts/projects that did involve multi-family housing on that site, there have been numerous comments made to me as I have made telephone contact and door-to-door contact that somebody is trying to pull a fast one. Mr. Vaughn agreed to the condition that these sites, under this zoning variance, shall be limited to office use only. It cannot, under this site plan proposal, be suddenly converted to an apartment complex or other structure. That condition is crucial and must be applied.

In Summary: Our concerns are traffic, speed of traffic, parking, destination traffic, notification and bait and switch. On paper Mr. Vaughn's project looks ideal. It will certainly be far more visually appealing than the uneven dirt, trash, semi tractor trailers and occasionally parked cars (for sale, of course) that are there now. Unlike a convenience store, it shouldn't generate 24-hour noise, trash, and congestion. But it will generate traffic.

Whether he likes it or not, or whether we like it or not, if/when Mr. Vaughn's development is approved, he becomes a member of our neighborhood — of my neighborhood. He doesn't live there. Nor, I suspect, will his tenants or buyers involved in this project. But I do. As do nearly 200 other families. We expect Mr. Vaughn to be a good neighbor — to partner with us and not negatively impact where we live. We expect the same from his tenants and/or economic partners in this development. I do not believe that that is an unreasonable request.

I thank the Council for allowing me this opportunity to speak and to state for the record the concerns I have and that our neighborhood has with this project. As I mentioned in my opening remarks, I hope you will consider them when you make your decision tonight.

Comments pursuant to a request by Broadway Office Building located at 2305 E. Broadway Road in the R-O, Residence Office District.

1. The builder has already begun construction on building number 5, including setting the forms for the foundation as if these variances had already been approved. Today they are doing the excavation for building number 4. Shouldn't they be required to wait until comments can be heard? They are proceeding as if this was a done deal.

2. The landscaping acts as a buffer between the residents living on El Parque and the office structure. Reducing that buffer can potentially create harm/cause problems for those neighbors.

a. Every business generates noise and activity generated by the coming and going of clients, service personal, delivery people, couriers, and employees.

b. Smoking employees usually stand at the rear of their buildings so they are not in view of the clients.

Questions:

1. Will there be additional lighting to facilitate police in patrolling the area since there will be a smaller space between the building and the alley fence?

2. What provisions have been made or will be made for property maintenance since it will appear there is more trash accumulating in a smaller area?

3. Why, after all the meetings previous to this one, and all the steps at which plans had to be submitted and approved is the builder just discovering that he needs more space? If he doesn't increase the space will he be unable to find tenants?

4. What will the increased building size do in terms of increased traffic through our neighborhood? (i.e. larger businesses, more clients, additional deliveries, etc.)

trucks

cost

MEDIAN DESIGN

SAVING OVER LOT DIRT

RECEIVED

00 DEC 19 PM 2:01

TEMPLE DEVELOPMENT
SERVICES DEPARTMENT

III

Tuesday, Jan. 9, 2001

To: Neil G. Giuliano, Mayor
Leonard Copple, Vice Mayor
P. Ben Arredondo, Council member
Dennis J. Cahill, Council member
Barbara J. Carter, Council member
Hugh Hallman, Council member
Mark W. Mitchell, Council member

Please remove consent agenda item 22 – 101 & Broadway Corporate Center #SBD-2001.06 – from the consent agenda at the regular City Council meeting scheduled for Jan. 11, 2001. This is a request for 101 & Broadway Corporate Center for a final subdivision plat at 2305 E. Broadway Road.

The residents in the Broadway Palms Neighborhood Association would like the opportunity for public comment and/or written comments to be made part of the record, and to be included in your consideration of this request.

The following information will explain the reasons for our request.

History

In 1997, when property owner Jerry Vaughn asked the City of Tempe to rezone his land at Cottonwood and Broadway so he could begin his development, a group of neighbors went to a public hearing to tell Mr. Vaughn that we preferred that he build out his property with homes. Tempe has a predominance of rental properties and, as a neighborhood, we wanted to encourage home ownership in our area. Also we felt strongly that, unlike a strip mall or industrial park, having commercial property tied to a residential neighborhood was not a good idea in the long run. We pointed out the parking and traffic issues and the draw of non-resident clientele and employees into our neighborhood that Mr. Vaughn's tenants would generate. As properties age and owners become desperate for tenants, we feared tenants that might be problematic in a residential setting. One of the resident's comments at that meeting were:

"Whether he likes it or not, or whether we like it or not, if/when Mr. Vaughn's development is approved, he becomes a member of our neighborhood – of my neighborhood. He doesn't live there. Nor, I suspect, will his tenants or buyers involved in the project. But I do. As do nearly 200 other families. We expect Mr. Vaughn to be a good neighbor – to partner with us, and not negatively impact where we live. We expect the same from his tenants and/or economic partners in this development. I do not believe that that is an unreasonable request."

Mr. Vaughn agreed to some conditions put forth by the city in order to obtain the rezoning and site-plan approval.

They are: (Those critical to Broadway Palms residents are in bold.)

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1. a. The Public Works Dept. shall approve all roadway, alley, and utility easement dedications, driveways, storm water retention, and street drainage plans, water and sewer construction drawings, refuse pickup, and off-site improvements.

b. Off-site improvements to bring roadways to current standards include:

1) Water lines and fire hydrants.

2) Sewer lines.

3) Storm drains.

4) Roadway improvements including streetlights, curb, gutter, bike path, sidewalk, bus shelter, and related amenities.

c. Fees to be paid with the development of this project include:

1) Water and sewer development fees.

2) Water and/or sewer participation fees.

3) Inspection and testing fees.

2. a. All street dedications shall be made within six (6) months of Council approval.

b. Public improvements must be installed prior to the issuance of any occupancy permits.

Any phasing shall be approved by the Public Works Department.

c. All new and existing, as well as on-site and off-site, utility lines (other than transmission lines) shall be placed underground prior to the issuance of an occupancy permit for this (re)development in accordance with Ordinance No. 88.85.

3. If the offices are subdivided into condominiums, the approval of CC&R's in a form acceptable to the City Attorney and the Development Services Director must take place prior to issuance of Certificate of Occupancy or recording of the condominium map, whichever is appropriate. These CC&R's should provide that a single entity will ultimately be responsible for maintaining all landscaping, both required by Ordinance and in the common area on site, according to the landscape plan approved by the City, and that such provision may not be amended without prior approval by the City Attorney and the Development Services director.

4. No variances may be created by future property lines with the prior approval of the City of Tempe.

5. A valid building permit shall be obtained and substantial construction commenced within one year of the date of Council approval or the site plan shall be deemed null and void.

6. A building permit shall be obtained and substantial construction commenced within two (2) years of the date of Council approval or the zoning shall revert to that in place at the time of application.

7. The site plan shall be modified so that the driveway on Broadway Road on the east lot allows right turns in and right turns out only. Details to be resolved with staff and reflected on the site plan prior to Council action.

8. In the future, if medical offices are proposed, the applicant will need to reduce building area and increase parking spaces.

9. Prior to issuance of a building permit, staff shall review and approve the location and orientation of refuse containers on site to ensure that they meet ordinance requirements.

10. The applicant shall resolve all lighting and security details with the Police Department prior to the issuance of a building permit.

11. These sites shall be limited to office use only.

12. The applicant shall work with the neighborhood and Transportation Division to mitigate traffic, potentially caused by this project, through the neighborhood.

13. Any fence along the canal shall be ornamental iron.

In letter dated 9/24/99 applicant Mark Abel Architect & Associates asked the City of Tempe for new variances which would allow reducing required landscaping setback on both street side yards from 25 feet to 20 feet, and to waive the requirement that the site be completely landscaped in the first phase of construction on commercial development sites.

That variance was approved with the same conditions called for in site plan approval for improvements, easements, fees paid, etc. Notable changes were:

3. If new property lines are created on this site, the approval of CC&R's in a form acceptable to the City Attorney and the Development Services Director must take place prior to issuance of Certificate of Occupancy. These CC&R's should provide that a single entity will ultimately be responsible for maintaining all landscaping, both required by Ordinance and in the common area on site, according to the landscape plan approved by the City, and that such provision may not be amended without prior approval by the City Attorney and the Department Services Director.

6. All previous applicable conditions of approval from 5/15/97 & 5/6/99 (#ZON-97.09 & SIP-07.27) shall be adhered to.

7. Developer shall provide an easement for a bus pullout and shelter along Broadway Road, East of Cottonwood Road. Details to be resolved with Public Works Transit staff.

8. Landscaping for Phase I shall be installed at the time the building is constructed for Phase I. Landscaping for Phase II shall be installed for Phase II, the east parcel (Lot A) at the time the building is constructed for Phase II. Details to be resolved with Planning Staff.

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9. Applicant shall install an on-site ramp and gate along the canal frontage to accommodate bicycle and pedestrian access to the canal and any future multi-use path. Details to be resolved through the Design Review Board/CPTED process.

10. Landscaping will replace one parking space at the entrance of each lot. Details to be approved by Design Review.

Other

The construction was to be phased, a landscaped median to go in when Phase II (east side) was developed. The developer agreed to build the median at his expense and to maintain it. Per Larry Shobe, Tempe Traffic Engineer, the conditions regarding the median and other traffic mitigation are binding as long as the project wants a driveway on Cottonwood.

Now

Saguaro Ventures, LLC, the current owner/developer of the Broadway Office Buildings located at Cottonwood Drive and Broadway Road has asked the City of Tempe to re-plot the east parcel that is currently under construction. What that will create is four separate properties, each with an office building sitting on it, and a potential of four different owners instead of one.

The City Attorney has assured me that all conditions agreed to by Mr. Vaughn in order to have site plan and zoning approval are binding on the properties, regardless of the owner. Unfortunately, we still have no sense that the owners of this property have any interest in its impact on the neighborhood or in their willingness to be "a good neighbor." Several residents called the city when the developer/contractor was running heavy truck traffic down neighborhood streets. They did not have the appropriate permits and the site was shut down for a while. There were days of blowing dust and contractor employees' vehicles parked up and down the streets, just as we anticipate that tenant employees' cars will be.

Because the staff report is directed to the re-platting issue only, it does not include any of the requirements agreed to by Mr. Vaughn in previous site plan and zoning hearings. To protect our neighborhood, we feel the inclusion of that information is critical to the record, particularly if any problems arise in the future.

Our concerns:

1. The worst-case scenario is four different owners doing four different things, bringing in tenants that might be bad for the neighborhood, and who have different ideas about maintaining the property.

2. Interpretation and explanation of what R-O zoning allows. R-O zoning allows banks, photography studios, medical and professional offices. Under some circumstances group homes and churches are also allowed. Does a check-cashing outlet qualify as a banking establishment under the zoning regulations? That's definitely not what we were led to

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believe would be going into this complex in 1997. Will four different owners have a unified plan for acquiring and keeping tenants?

3. Will all four owners be held to the conditions agreed to by Jerry Vaughn in 1997? Are they even aware of them?

If this property were in a strip mall or industrial park the questions wouldn't apply. These buildings will draw clients and employees into our neighborhood. The owners need to be good neighbors!

Please notify me if you agree to remove item 22 from the Consent Agenda so that we can submit our comments for the record. Thank you for your consideration.

Sincerely,

Wendy L. Marshall
Broadway Palms Neighborhood Association

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Comments to the Tempe City Council
January 11, 2001

Mayor and Councilmen,

Thank you for this opportunity to speak on agenda item 22, 101& Broadway Corporate Center # SBD-2001.06 – a request by Saguaro Ventures LLC before the Council to replat its property at 2305 E. Broadway Road from one parcel into four.

The residents in the Broadway Palms Neighborhood Association would like their comments to be part of the official record, and to be included in your consideration of the request before you this evening.

Our Concerns:

1. The worst-case scenario is four different owners doing four different things, bringing in tenants that might be bad for the neighborhood, and who have different ideas about maintaining the property. Will they be good neighbors?
2. Interpretation and explanation of what R-O zoning allows. R-O zoning allows banks, photography studios, medical and professional offices. It is my understanding that, under some circumstances, group homes and churches are also allowed. In 1997, when the zoning was changed, we were told that RO zoning also allows apartments or condominiums. As the property ages and owners find themselves in competition with other properties in Tempe for tenants, will they adhere to Mr. Vaughn's agreement that these buildings will be for professional office use only? Does a check-cashing or payday loan outlet qualify as a banking establishment under the zoning regulations? That is definitely not what we were led to believe would be going into this complex in 1997. Will four different owners have a unified plan for acquiring and keeping tenants? Will they be good neighbors?
3. Will all four owners be held to the conditions agreed to by Jerry Vaughn in 1997? Are they even aware of them? If this property were in a strip mall or industrial park these questions would be moot. These buildings will draw clients and employees into our neighborhood. The owners need to be good neighbors.
4. Will all four owners be held to the conditions agreed to by Jerry Vaughn in 1997? Are they even aware of them?

And that's what's really at issue here. There has never been that relationship between the owner and now developers of this property and the neighborhood. In 1997, Mr. Vaughn told the Council that he'd owned the property for 25+ years and he could, as the property owner, do with it whatever he wanted to. And, within the bounds of zoning, he's right. But he was told then, that the neighborhood preferred that he build it out in houses. Tempe has a preponderance of rentals, and we wanted to encourage homeownership in our area. We felt strongly that, unlike a strip mall or industrial park, having commercial

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property tied to a residential neighborhood was not a good idea in the long run. We pointed out the parking and traffic issues and the draw of non-resident clientele and employees that Mr. Vaughn's tenants would generate. One resident's comments at that meeting were:

"Whether he likes it or not, or whether we like it or not, if/when Mr. Vaughn's development is approved, he becomes a member of our neighborhood – of my neighborhood. He doesn't live here. Nor, I suspect, will his tenants or buyers involved in the project. But I do. As do nearly 200 other families. We expect Mr. Vaughn to be a good neighbor – to partner with us, and not negatively impact where we live. We expect the same from his tenants and/or economic partners in this development. I don't believe that is an unreasonable request."

And it continues to not be unreasonable. But the developer has not done anything in the last six or seven months to suggest that he is, or will be, a good neighbor. He's run heavy trucks loaded with dirt down neighborhood streets without permits. He's generated huge clouds of dust without running water trucks to wet it down. And now, it appears, he wants to break the accountability down even further from one entity being ultimately responsible for what goes on at the property to four. For the developer, I'm sure it's not personal. It's just business. For the neighbors, it's personal. This is where we live.

Being only 5 miles from Arizona State University and one mile from Mesa Community College, there are plenty of rentals in our neighborhood. There are more than 2,000 rental units available in the one-mile stretch of Apache/Main Street from Price to Dobson.

The neighbors want their comments to go on record so that the Council understands what we have to contend with. They want their comments to go on record in case the developer continues in his pattern of being less than a good neighbor. And, should our worse case scenarios come to pass, that the record will be clear about what the remedies will be.

Thank you for your time.

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My name is Wendy Marshall and I live at 2312 E. Concorda Drive, Tempe. That is in the Broadway Palms Subdivision, which is bordered, by Broadway to the north, Alameda to the south, Price Frontage road to the west and the Tempe Canal to the east.

I am speaking on behalf of the Broadway Palms Neighborhood Association, which comprises the 210 residences within the boundaries I've just mentioned.

Neighbors have been before this body, the Board of Adjustment and the Planning and Zoning Commission several times since April of 1997, when the professional office complex at the intersection of Broadway Road and Cottonwood Drive was first proposed. From the outset, our concerns were increased traffic on neighborhood streets, and overflow-parking problems potentially generated by this complex.

Neighbors met with applicant, Derek Stevenson, with Architect Mark Abel, and with Eric Jones, a representative of Commercial Properties, Inc. the sales agent for the development on July 18th. At that meeting we went through the list of questions posed to the Board of Adjustment point by point. Our position, is that the properties will be generating the traffic and the overflow parking, and therefore, they should develop a management plan to address it

Tonight is the first of two public hearings on a proposed variance request by 101 & Broadway Corp. Center Lot #3. It is an issue of parking. Staff has indicated that, based on the information that the applicant has provided about his business, they will recommend your approval. We would like you to apply three stipulations or conditions to the approval of that variance.

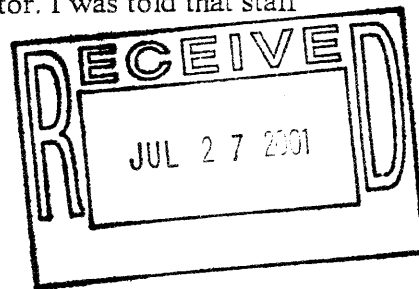
1. Each owner will instruct their employees and clients or invitees not to park their vehicles on neighborhood streets and will install signage to that effect. If the parking lot fills to capacity, the owners must make provisions to provide additional offsite parking and/or transportation.

2. In the event that a building owner schedules an after-hours activity that will generate a need for parking beyond the capacity of the site, that owner will notify the residents living on El Parque and on both sides of Cottonwood Drive south to Palmcroft (approximately 15 homes). That notification should be made a minimum of 48 hours prior to the event.

This situation has already occurred. And in the spirit of being good neighbors, we feel it should continue.

3. These two conditions should be attached to the site so that they don't go away, should the property be sold, or if there is a change of use of the building.

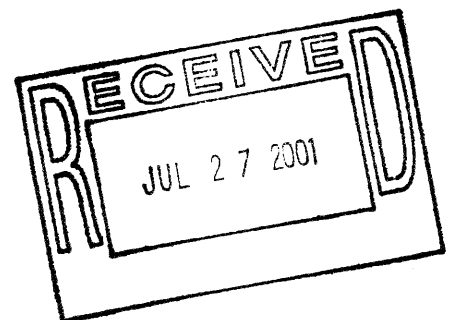
4. The variance request before you this evening should also be tied to Mr. Stevenson's business only – not to any subsequent building owner or operator. I was told that staff



was going to attach that condition to the variance and should be in the paperwork you already have.

Those are our requests. We don't feel they are unreasonable or burdensome. We hope you agree.

Thank you for your time this evening.



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BROWN & BAIN, P.A.

Attorneys at Law

MALA D. CLANCEY
T(602) 351-8265
F(602) 648-7085
clancey@brownbain.com

July 31, 2001

Dallas Petersen: Vaughn

Dear Eric:

Telecopied herewith is a revised draft of the Reciprocal Easement and Maintenance Agreement, together with a black-lined copy of the relevant page showing the latest revisions. Complete clean and black-lined copies will be mailed to you.

As you are aware, Paragraph 1 of Wendy Marshall's letter requests that the Owners be required to provide for offsite parking if the onsite parking is full. Pursuant to your discussion with Ron, the revised draft of the Reciprocal Easement and Maintenance Agreement does not include such a provision. However, in an attempt to satisfy the homeowners, new Paragraph 11 does provide that the Owners will use their best efforts to prevent their employees and invitees from parking on neighborhood streets (which may, in fact, include providing offsite parking).

Please call Ron or me with any questions or additional revisions.

Very truly yours,

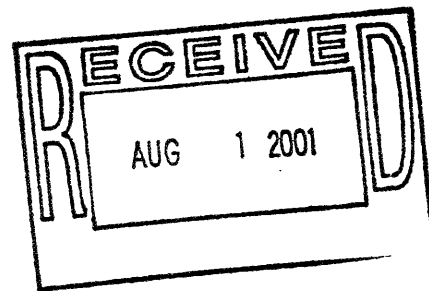
Mala Clancey/amw
Mala D. Clancey

Mr. Eric Jones
Commercial Properties, Inc.
1625 West University Drive, Suite 117
Tempe, Arizona 85281

FACSIMILE (480/966-2307) and MAIL

MDC/wpc (148676_1)

Enclosures



PHOENIX
TUCSON

MAILING ADDRESS
P.O. BOX 400
PHOENIX, ARIZONA 85001-0400

STREET ADDRESS
2901 NORTH CENTRAL AVENUE
PHOENIX, ARIZONA 85012

T(602) 351-8000
F(602) 351-8516
www.brownbain.com

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Mr. Eric Jones

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July 31, 2001

Copy with enclosures to:

Mr. Randy Rostron
General Manager
Tucaccon Construction, LLC
371 West Cullumber Avenue
Gilbert, Arizona 85233

FACSIMILE (480/813-3888) and MAIL

Mr. Dallas Petersen
Sahuaro Contracting
371 West Cullumber
Gilbert, Arizona 85233

FACSIMILE (480/813-3888) and MAIL

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10. Casualty. In the event any portion of the Common Areas is destroyed or damaged by fire or other casualty, the individual or entity charged with maintaining the Common Areas shall cause the repair, restoration and/or rebuilding of same and the cost of same shall be shared equally by all Owners on a per Lot basis after application of all applicable insurance proceeds.

11. Parking. Each Owner shall (i) instruct its employees and invitees not to park their vehicles on residential streets in the Broadway Palms Subdivision (as defined below) while such employees and invitees are at the Project; (ii) install signage to that effect; and (iii) otherwise use its best efforts to prevent its employees and invitees from parking their vehicles on such residential streets. The "Broadway Palms Subdivision" means the residential subdivision bounded on the north by Broadway Road, on the east by the Tempe Canal, on the south by Alameda Drive and on the west by Price Road.

12. After-Hours Activities. In the event an Owner schedules an activity or event after normal business hours which is likely to generate a need for parking in excess of the parking available at the Project, the Owner shall give at least forty-eight (48) hours' notice of same to residents of homes located on El Parque Drive and on both sides of Cottonwood Drive south to Palmcroft Drive.

13. Amendments. This Agreement may be amended only with the consent of all Owners; provided, however, any amendment to Paragraph 11 or Paragraph 12 hereof is also subject to the approval of a majority of the owners of homes in the Broadway Palms Subdivision.

14. Attorneys' Fees. The prevailing party or parties in any action hereunder shall be entitled to the recovery of its or their attorneys' fees and court costs from the non-prevailing party or parties.

15. Remedies. In the event of a default by any Owner hereunder, in addition to all rights and remedies provided herein, each other Owner shall be entitled to all rights and remedies at law and in equity; provided, however, in no event shall any default entitle any Owner to cancel, terminate or rescind this Agreement.

16. Arbitration. Any disputes concerning this Agreement shall be resolved by arbitration in Phoenix, Arizona by a single arbitrator, which arbitration shall be conducted in accordance with the commercial arbitration rules of the American Arbitration Association.

17. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

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When recorded, return to:

Ronald E. Lowe, Esq.
Brown & Bain, P.A.
2901 North Central Avenue, Suite 2000
Phoenix, Arizona 85012

RECIPROCAL EASEMENT AND MAINTENANCE AGREEMENT

THIS RECIPROCAL EASEMENT AND MAINTENANCE AGREEMENT (the "Agreement") is made as of the _____ day of _____, 2001 by SAHUARO VENTURES, L.L.C., an Arizona limited liability company ("Declarant").

RECITALS:

WHEREAS, Declarant is the owner of Lots 1, 2, 3 and 4 (individually, a "Lot," and collectively, the "Lots") as shown on the plat recorded in Book _____ of Maps, Page _____ of the records of the Maricopa County, Arizona Recorder; and

WHEREAS, Declarant contemplates constructing improvements on each of the Lots, including, but not limited to, an office building and parking facilities; and

WHEREAS, the Lots, as improved, are intended, together, to constitute one office project (the "Project"); and

WHEREAS, Declarant intends by this Agreement to impose upon the Lots mutually beneficial restrictions and easements under a general plan of development and to establish a method for the administration, maintenance, preservation, use and enjoyment of the Lots;

NOW, THEREFORE, Declarant declares as follows:

1. Definitions. The following words shall have the following meanings:

a. "Common Areas" shall mean the real property described on Exhibit "A" attached hereto.

b. "Common Expenses" shall mean all expenses incurred in connection with the operation and/or maintenance of the Common Areas, including, without limitation, sweeping, repairing and restriping the parking areas on the Common

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Areas, securing utilities for the Common Areas, including electricity, water, and trash collection, maintaining landscaping and sprinkler systems on the Common Areas and mowing and reseeding grass on the Common Areas.

c. "Owner" shall mean the record owner of fee simple title to all or any portion of the Lots.

d. "Person" shall mean a natural person, corporation, limited liability company, business trust, estate, trust, partnership, association joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

2. Lots Subject to Agreement. Declarant intends by this Agreement to impose upon the Lots mutually beneficial restrictions and easements under a general plan of development and to establish a method for the administration, maintenance, preservation, use and enjoyment of the Lots. Declarant hereby declares that all of the Lots shall be held, sold, used and conveyed subject to the easements, restrictions, conditions and covenants set forth in this Agreement which are for the purpose of protecting the value and desirability of and which shall run with the Lots. Declarant further declares that this Agreement shall be binding upon all Persons having any right, title or interest in the Lots or any part thereof, and their successors, successors in title and assigns and shall inure to the benefit of each Owner thereof. By acceptance of a deed or by acquiring any interest in any Lot, each Person, for himself, herself, or itself, and for his, her and its heirs, personal representatives, successors, transferees and assign, binds himself and his, her or its heirs, personal representatives, successors, transferees and assigns to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Agreement and any amendments thereof. In addition, each such Person by so doing thereby acknowledges that this Agreement sets forth a general plan for the development, sale, lease and use of the Lots or any portion thereof and hereby evidences his, her or its agreement that all the restrictions, conditions, covenants, rules and regulations contained in this Agreement shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Agreement shall be mutually beneficial, prohibitive and enforceable by all Owners, Declarant and his, her and its successors, assigns and grantees, and covenants and agrees that the Lots and the rights created by this Agreement shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with his, her or its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

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3. Easements.

a. Use of Common Areas. Each Owner, its tenants, and their employees, agents, customers, licensees, invitees, successors and assigns shall have a non-exclusive easement of enjoyment in and to the Common Areas for their intended uses, which easement shall be appurtenant to and shall pass with the title to the Owner's Lot. Such uses shall include, but not be limited to, pedestrian and vehicular ingress and egress and parking. Anything herein to the contrary notwithstanding, the parking stalls designated on Exhibit "B" hereto as being "4 COVERED PARKING STALLS RESERVED FOR LOT AS SHOWN" may be used only by the Owner of the applicable Lot and its designees.

b. Utility Lines and Facilities.

i. Each Owner shall have a non-exclusive easement on, under, through and across all Common Areas for the installation, operation, maintenance, repair and replacement of utility lines and facilities including water drainage systems, water mains, sewers, water sprinkler system lines, telephone lines, electrical conduits or systems, and gas mains and utility meters. All such utility lines and facilities (other than meters, ground mounted electrical transformers and such other facilities as are required to be above ground by the utility providing service) shall be installed and maintained below the ground level or surface of the easement premises. The installation, operation, maintenance, repair and replacement of such utility facilities shall not unreasonably interfere with the use of the Project. The Owner(s) of the Lot(s) benefiting from the utility lines and facilities shall bear all costs related to the installation, operation, maintenance, repair and replacement of same, and shall repair any damage to the Common Areas resulting from such installation, operation, maintenance, repair and replacement. Any change in the location of any such line or facility (after the initial placement of same) shall be subject to the approval of all Owners.

ii. Each Owner agrees to grant such additional easements as are reasonably required by any public or private utility for the purpose of providing the utility lines and facilities described herein provided such easements are not otherwise inconsistent with the provisions of this Agreement.

c. Temporary Construction Easements. In connection with any construction work to be performed in the development of the Project, each Owner, and its employees and contractors shall have non-exclusive temporary easements over all Common Areas for encroachments which may occur as a result of construction, and for other construction purposes so long same occur in connection

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with reasonable construction expeditiously pursued and so long as customary insurance is maintained protecting the applicable Owner from risk. All construction shall be done so as to cause minimal interference with any business operations conducted at the Project. During any construction, the Owner undertaking such construction shall keep the construction site and surrounding areas reasonably clean and free of construction material, trash and debris and shall take appropriate precautions to protect against personal injury and property damage.

d. Easement for Encroachments. Each Owner shall have a non-exclusive easement over all Common Areas for the encroachment of any improvements constructed on the Owner's Lot which encroach onto the Common Areas as a result of minor inaccuracies in survey, construction or reconstruction or due to settlement or similar reason. Such easements for encroachment shall include an easement for the maintenance and use of the encroaching improvements.

e. Easements for Landscaping, Hardscape and Maintenance. Each Owner and its employees and agents shall have a non-exclusive easement over the Common Areas for installing and maintaining landscaping and hardscape and for maintaining the Common Areas.

f. Easements for Trash Containers. Each Owner shall have a non-exclusive easement over the Common Areas for the placement and use of trash receptacles.

g. Drainage Easements. Each Owner shall have a non-exclusive easement for drainage purposes over all portions of the Lots and Common Areas which may be used for drainage in accordance with the approved Site Plan, Landscaping Plan and Grading and Drainage Plan on file with the City of Tempe, Project Nos. DS990652 and EN000033.

4. Construction; Alterations.

a. Construction Requirements. All work performed in the construction, maintenance, repair, replacement or alteration of any building or other improvement at the Project shall be effected as expeditiously as possible and in such a manner so as not to unreasonably interfere with operations at the Project. The party performing or causing the performance of such work shall not permit any liens to stand against any portion of the Project.

b. Alterations. No improvements that have been constructed or installed on any Common Area shall be altered without the prior consent of all Owners.

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5. Common Areas.

a. Maintenance. All decisions involving the Common Areas including, without limitation, those regarding the operation, use or maintenance of same, shall be subject to the unanimous agreement of the Owners. For instance, the Owners shall unanimously decide who will be responsible for the maintenance of the Common Areas, and each of the Owners shall execute the contract relating to same, if any. Anything herein to the contrary notwithstanding, the Common Areas shall be maintained in good, clean, functional and safe condition. Such maintenance shall include but not be limited to trash service, keeping the Common Areas free from trash and debris, mowing and tending to any landscaped areas, sweeping, repaving and restriping parking areas and driveways, maintaining adequate exit and entrance and other directional signs, maintaining the patios and installing and maintaining adequate lighting.

b. Common Expenses. Common Expenses shall be shared equally by all Owners on a per Lot basis. The procedure for determining and collecting the Common Expenses shall be unanimously agreed upon by the Owners. If an Owner fails to timely pay its portion of Common Expenses, any remaining Owner(s) who have paid their share (the "Non-Delinquent Owners"), may give the non-paying Owner (the "Delinquent Owner") ten (10) days notice and opportunity to pay. If the Delinquent Owner fails to pay within such ten (10) day period, the Non-Delinquent Owner(s) may pay the Delinquent Owner's share and thereafter shall have a lien on the Delinquent Owner's Lot until the Delinquent Owner repays the Non-Delinquent Owner(s) the amount paid on behalf of the Delinquent Owner plus interest at the rate of twenty-four percent (24%) per annum (not to exceed the maximum rate permitted by law) from the date such amount is paid by the Non-Delinquent Owner(s) until repaid by the Delinquent Owner. Any such lien may be foreclosed in the manner provided by law for foreclosure of a mortgage. Each Non-Delinquent Owner paying a portion of the Delinquent Owner's share of Common Expenses shall have a pro rata interest in the lien and, following an acquisition of the Lot by the Non-Delinquent Owner(s) as a result of foreclosure, in the Lot, based on the portion each Non-Delinquent Owner paid.

c. Failure to Maintain. In the event the individual or entity charged with maintaining the Common Areas fails to perform such maintenance, any Owner(s) shall have the right, but not the obligation, to do so upon notifying the other Owners. Any amounts expended by any Owner(s) to perform any such maintenance shall be shared equally among the Owners and the Owner(s) expending such amounts shall be reimbursed accordingly.

d. Single Entity to Maintain Landscaping. A single individual or entity shall ultimately be responsible for maintaining all landscaping, both required by City of Tempe ordinance and in the Common Areas, according to the landscape

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plan approved by the City of Tempe. This Paragraph 5(d) shall not be amended without prior approval by the City Attorney and the Development Services Manager of the City of Tempe.

6. Utilities. To the extent feasible, utilities serving the Common Areas shall be separately metered and all utility charges with respect to the Common Areas shall be treated as a part of Common Expenses, i.e., shared equally among the Owners on a per Lot basis. The procedure for paying utility bills shall be unanimously agreed upon by the Owners; provided that each Owner hereby agrees to pay its share of same where directed prior to delinquency. If utilities serving the Common Areas are not separately metered, the Owners shall unanimously determine what portion of utility costs should be allocated to the Common Areas on some equitable basis.

7. Insurance. Each Owner shall maintain public liability insurance and property damage insurance on its Lot, including any Common Areas constituting a part of the Lot, in reasonable amounts. Upon request, an Owner shall add the other Owners to its policies as additional insureds.

8. Real Property Taxes. Each Owner shall pay, before delinquent, real property taxes with respect to its Lot. If an Owner fails to pay real property taxes with respect to its Lot before delinquent (such Owner is hereinafter referred to as the "Non-Paying Owner"), any other Owner(s) can pay same (such Owner(s) are hereinafter referred to as the "Paying Owner(s)") and thereafter shall have a lien on the Non-Paying Owner's Lot until the Non-Paying Owner repays the Paying Owner(s) the amount paid on behalf of the Non-Paying Owner plus interest at the rate of twenty-four percent (24%) per annum (not to exceed the maximum rate permitted by law) from the date such amount is paid by the Paying Owner(s) until repaid by the Non-Paying Owner. Any such lien may be foreclosed in the manner provided by law for foreclosure of a mortgage. Each Paying Owner shall have a pro rata interest in the lien and, following an acquisition of the Lot by the Paying Owner(s) as a result of foreclosure, in the Lot, based on the portion each Paying Owner paid.

9. Compliance With Laws. Each Owner shall cause its Lot, exclusive of any Common Areas located thereon, to comply with all applicable laws, regulations and other requirements, including, but not limited to, all environmental laws and regulations. The individual or entity charged with maintaining the Common Areas shall cause the Common Areas to comply with all applicable laws, regulations and other requirements and the cost of same shall be treated as part of Common Expenses; provided, however, if any non-compliance is due to the act or omission of an Owner, that Owner shall be responsible for remedying such non-compliance at its sole cost. No portion of any Lot or Common Area shall be used so as to constitute a nuisance or for any offensive activity or purpose.

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10. Casualty. In the event any portion of the Common Areas is destroyed or damaged by fire or other casualty, the individual or entity charged with maintaining the Common Areas shall cause the repair, restoration and/or rebuilding of same and the cost of same shall be shared equally by all Owners on a per Lot basis after application of all applicable insurance proceeds.

11. Parking. Each Owner shall (i) instruct its employees and invitees not to park their vehicles on residential streets in the Broadway Palms Subdivision (as defined below) while such employees and invitees are at the Project; (ii) install signage to that effect; and (iii) otherwise use its best efforts to prevent its employees and invitees from parking their vehicles on such residential streets. The "Broadway Palms Subdivision" means the residential subdivision bounded on the north by Broadway Road, on the east by the Tempe Canal, on the south by Alameda Drive and on the west by Price Road.

12. After-Hours Activities. In the event an Owner schedules an activity or event after normal business hours which is likely to generate a need for parking in excess of the parking available at the Project, the Owner shall give at least forty-eight (48) hours' notice of same to residents of homes located on El Parque Drive and on both sides of Cottonwood Drive south to Palmcroft Drive.

13. Amendments. This Agreement may be amended only with the consent of all Owners; provided, however, any amendment to Paragraph 11 or Paragraph 12 hereof is also subject to the approval of a majority of the owners of homes in the Broadway Palms Subdivision.

14. Attorneys' Fees. The prevailing party or parties in any action hereunder shall be entitled to the recovery of its or their attorneys' fees and court costs from the non-prevailing party or parties.

15. Remedies. In the event of a default by any Owner hereunder, in addition to all rights and remedies provided herein, each other Owner shall be entitled to all rights and remedies at law and in equity; provided, however, in no event shall any default entitle any Owner to cancel, terminate or rescind this Agreement.

16. Arbitration. Any disputes concerning this Agreement shall be resolved by arbitration in Phoenix, Arizona by a single arbitrator, which arbitration shall be conducted in accordance with the commercial arbitration rules of the American Arbitration Association.

17. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

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18. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, with the same force and effect as if all signatures were appended to one instrument.

19. Construction. This Agreement is the result of negotiations between the parties, and accordingly shall not be construed for or against either party regardless of which party drafted this Agreement.

20. Severability. If any provision or any portion of a provision of this Agreement is deemed to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect the remaining portion of that provision or of any other provision of this Agreement, as each provision of this Agreement shall be deemed to be severable from all other provisions hereof.

21. Headings. The paragraph headings in this Agreement are inserted for the purpose of reference only and shall not limit, define or expand the provisions of this Agreement or any one of them.

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IN WITNESS WHEREOF, Declarant has executed this Agreement as of the date first set forth above.

DECLARANT:

SAHUARO VENTURES, L.L.C., an Arizona
limited liability company

By _____

Its _____

STATE OF _____)
County of _____) ss.

The foregoing instrument was acknowledged before me this ____ day of _____, 2001, by _____, as _____ of SAHUARO VENTURES, L.L.C., an Arizona limited liability company, on behalf of the limited liability company.

Notary Public

My Commission Expires:

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Exhibit "A"

[Attach Legal Description of Common Areas]

AUG 01 2001

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JUL 31 2001 19:57 FR BROWN BAIN PHX #2 602 351 8516 TO 0249#12432#1#480 P.14

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Exhibit "B"

[Attach Depiction of Exclusive Parking Stalls]

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JUL 31 2001 19:57 FR BROWN BAIN PHX #2 602 351 8516 TO 0249#12432#1#480 P.15

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